

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
(202) 371-7370
DIRECT FAX
(202) 661-2370
EMAIL ADDRESS
SHAY.DVORETZKY@SKADDEN.COM

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

July 8, 2024

David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
Elbert P. Tuttle Courthouse
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

RE: *Spirit Airlines, Inc. v. United States Department of Transportation*, No. 24-12121 (11th Cir.): Notice of petition challenging the same rule filed earlier before the Fifth Circuit in *Airlines for America et al. v. Department of Transportation*, No. 24-60231 (5th Cir.), and thus requiring transfer of this case to the Fifth Circuit under 28 U.S.C. § 2112(a)(5)

Dear Mr. Smith:

We represent the Petitioners (the Airlines) before the Fifth Circuit in *Airlines for America et al. v. Department of Transportation*, No. 24-60231 (5th Cir.). In that litigation, the Airlines challenge the same rule that Spirit Airlines, Inc., challenges here, *Enhancing Transparency of Airline Ancillary Service Fees*, 89 Fed. Reg. 34,620 (Apr. 30, 2024) (Rule). The Airlines thus write to notify this Court that by statute it “shall transfer” this case (*Spirit Airlines, Inc. v. United States Department of Transportation*, No. 24-12121) to the Fifth Circuit. 28 U.S.C. § 2112(a)(5).

When only one petition for review of an agency rule is filed within the first ten days after issuance of the rule, the agency “shall file the record in that court.” *Id.* § 2112(a)(1). If no petition is filed within the ten-day window,

the agency “shall file the record in the court in which proceedings with respect to the order were first instituted.” *Id.* Then, “[a]ll courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed . . . , shall transfer those proceedings to the court in which the record is so filed.” *Id.* § 2112(a)(5). In other words, any later-filed petitions must be transferred to the court of appeals in which the first petition was filed.

Here, the Airlines first petitioned for review of the Rule on May 10, 2024 (docketed May 14, 2024), and then filed another petition adding additional petitioners on June 12 (docketed June 13, 2024). The Airlines have since sought a stay of the Rule because it exceeds the Department of Transportation’s authority and is unlawful under the Administrative Procedure Act; the stay motion has been fully briefed by both sides since July 1, 2024. The May 10 petition was the first and only petition filed within the first ten days of issuance of the Rule on April 30, 2024. Accordingly, the Department of Transportation must file the record in the Fifth Circuit (the record is currently due July 23, 2024), *id.* § 2112(a)(1), and this Court “shall transfer” Spirit Airlines’ petition to the Fifth Circuit, *id.* § 2112(a)(5).

The Airlines will file a copy of this letter as an exhibit to a corresponding letter to be filed before the Fifth Circuit.

Dated: July 8, 2024

Respectfully submitted,

/s/ Shay Dvoretzky

Alisha Q. Nanda
SKADDEN, ARPS, SLATE
MEAGHER & FLOM LLP
500 Boylston Street
Boston, MA 02116

Nicole Welindt
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
525 University Ave.
Palo Alto, CA 94301

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
Kyser Blakely
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Ave., NW
Washington, DC 20005
Telephone: 202-371-7000
shay.dvoretzky@skadden.com

Counsel for Petitioners Airlines for America (A4A), National Air Carrier Association (NACA), and International Air Transport Association (IATA), in Airlines for America et al. v. Department of Transportation, No. 24-60231 (5th Cir. filed May 10, 2024)

Paul W. Hughes
Andrew A. Lyons-Berg
Nicole E. Wittstein
McDERMOTT WILL
& EMERY LLP
500 North Capitol St. NW
Washington, DC 20001

Counsel for Petitioners A4A, NACA, Alaska Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., Hawaiian Airlines, Inc., JetBlue Airways Corporation, and United Airlines, Inc., in Airlines for America et al. v. Department of Transportation, No. 24-60231 (5th Cir. filed May 10, 2024)

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I caused copies of this document to be served on the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit, as well as counsel for Spirit Airlines, Inc., and the U.S. Department of Transportation by email and FedEx.

Dated: July 8, 2024

/s/ Shay Dvoretzky

Shay Dvoretzky